

### **REMARKS/ARGUMENTS**

This amendment responds to the final office action dated October 15, 2007.

The applicant has amended each of independent claims 1, 10, 25, and 60 for clarity. Specifically, the present amendments to claims 1 and 10 clarify that the claimed limitations of user “preferences”, in a user attribute scheme, and program “attributes” in a program attribute scheme, are each ordered in respectively described hierarchical organizations. Prior to the present amendment, the claimed hierarchical organization was described indiscriminately with respect to both the claimed “preferences” and “attributes” which could have caused confusion as to the relationship between the claimed “preferences” and “attributes.” Similarly, claim 25 has been amended to correctly recite the term “attribute” with respect to the claimed “program attribute” information. Claim 60 has been amended to clarify that the “attributes of said program attribute information each associated with a respective preference of said user attribute information.”

The Examiner rejected claims 1-11, 13, 14, 25-27, 50-53, 57, and 60 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Herz, U.S. Patent No. 6,020,883, in view of Finseth, U.S. Patent Number 6,754,906. The Examiner rejected claims 15, 28, 59, and 61-64 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Herz, U.S. Patent No. 6,020,883, in view of Finseth, U.S. Patent Number 6,754,906, and in further view of Graves, U.S. Patent No. 5,410,344. Both of these rejections maintain those made in a prior office action, and to which the applicant responded in an amendment filed September 7, 2007. The Examiner’s latest rejection fails to adequately address the applicant’s arguments of record.

Specifically, with respect to independent claim 1, that claim includes the limitations of:

(i) *“receiving user attribute information corresponding to user preferences . . . wherein said preferences include hierarchical levels . . . [and] wherein said first level includes preferences that together encompass all preferences of said second level;*

(ii) *“receiving a first plurality of program information corresponding to said at least one of said audio and video, where said plurality of said first program information includes attributes each corresponding to a respective one of said user preferences; and*

(iii) determining the desirability of said at least one of said audio and video based upon jointly processing attributes of at least said first level and said second level of said hierarchical levels of said program information attributes and jointly processing preferences of at least said first level and said second level of said hierarchical levels of said user attribute information” where the preferences can expressed in either a positive, negative, or neutral fashion.

The primary reference, Herz, discloses that a user of an audiovisual system, such as a consumer of television content, may have a number of profiles, each valid for specified periods of the day. *See Id.* at col. 17 lines 26-64. Each profile comprises specific preference characteristics associated with that profile, i.e. preferences for “action” or “gore” or “drama” etc. These profiles may be hierarchical in nature, in the sense that one profile may be valid for a time interval within that of a profile of a greater temporal width.

To explain the desirability and utility of separate user profiles, Herz discloses that each profile may be generally thought, *in the abstract*, to correspond to a particular mood in which the user predictably feels during certain intervals of the day. As part of that explanatory disclosure, Herz describes hypothetical moods such as “peaceful” “violent” “speculative, and the like, showing that each such mood may correspond to a respective set of user preferences that can, and should, be distinguished from each other in a system that seeks to accurately predict what a user might wish to see at that point in time. While Herz discusses these “moods”, the system disclosed therein does not identify or distinguish them as such – the profiles of Herz are in fact, specifically identified solely in numerical terms, i.e. profile 1, profile 2, etc, and they are distinguished from each other solely by the respective content characteristics contained therein, along with the time interval for which the profile is active.

The Examiner, however, attaches too much significance to Herz’s discussion of “moods”, and premises the rejection on the assumption that the disclosed “moods” are “assigned to users” and “can be used to select programming for the user.” *See* Office Action at p. 2. The Examiner’s rejection then rests on an assertion that, if “one were in a speculative and peaceful mood this would have a different meaning than someone in a

violent and speculative mood. Therefore, the programming selected in each of these examples would be different. Therefore the first level moods would need to contain the second level moods to provide accurate programming to the user.” *Id.*

In actuality, Herz discloses no such thing. The only relevant characteristic of Herz’s system is that a user gets to define multiple profiles, each containing its own unique set of content characteristics, e.g. one profile for “action” “violence” “R-rated” from, say 7:00 to 11:00 p.m., and a second profile for “news” “documentaries” “weather” from 5:00 pm to 8:00 pm, etc. Note that in this example, were these the only two profiles set, the first profile would be considered “generic” because it has the largest time width, even though no characteristics of the respective profiles overlap, hence the Examiner’s assertion that the first level moods must contain the second level moods to provide accurate programming is simply untrue.

Moreover, assuming the Examiner’s best case scenario that a user somehow sets two profiles, where the second profile occupies a time slot entirely within that of the first, and contains content characteristics that are also *all* in the first profile, that hypothetical example would still not entail the claim limitation of a “second level where said second level of said user preferences includes preferences descriptive of one or more preferences of said first level at a finer level of detail.” That is to say, if a first profile contains the content characteristics of “action” “violence” and “R-rated” while the second profile only contains “violence” and R-rated”, none of the characteristics in the second profile are descriptive of any in the first at a finer level of detail – they are each merely repetitive, verbatim, of preferences in the first profile.

Even setting aside the Examiner’s over-reliance on the term “moods” in the disclosure of Herz, a more fundamental error on the part of the Examiner is in inconsistently applying the claim term “preferences” - first to the moods/profiles of Herz, but later to the specific characteristics within those moods/profiles that are assigned values. This inconsistent claim reading is self-contradictory. Initially, the Examiner asserts that the claim term “preferences” are disclosed by Herz’s moods, and argues that these moods are arranged hierarchically. But the moods of “peaceful”, “speculative” or “violent” are not assigned selective ones of Herz’s positive or negative values – *it is the*

*characteristics within these profiles that are assigned such values.* Thus, for the Examiner to find in the prior art applicant's later limitations regarding expressing preferences either in positive, negative, or neutral terms, the Examiner foregoes the earlier assertion that it is the "moods" of Herz that are the claimed "preferences" and instead redefines that term as reading upon the specified content characteristics contained within those moods. An Examiner's rejection, however, cannot be premised on such a flexible approach to claim interpretation. The Examiner is required to pick one of these mutually exclusive interpretations of the term "preferences" and apply it *consistently throughout the entire claim.*

If the Examiner elects to read the term "preferences" on the moods/profiles of Herz, then the Examiner has failed to show that the prior art discloses the claim limitation of:

wherein said preferences selectively include data indicative of at least a first, a second, and a third option;

(i) said first option including a preference indicative of the positive desirability of said at least one of audio and video;

(ii) said second option including a preference indicative of non-desirability of said at least one of audio and video;

(iii) said third option including a preference indicative of indifference desirability, being neither said positive or non-desirability, of said at least one of audio and video.

If, however, the Examiner elects to read the claim term "preferences" on the specific content characteristics described within the "moods", then the Examiner has failed to show that these specific content characteristics are arranged hierarchically, that the "first level includes preferences that together encompass all preferences of said second level", and that the preferences of the second level are "descriptive of one or more preferences of said first level at a finer level of detail."

For each of these reasons, independent claim 1, as well as its dependent claims 2-9 are patentably distinguished over the cited prior art.

Independent claim 10 includes the limitations of "receiving user attribute information that includes user preferences arranged in hierarchical levels including at

least a first level and a second level where said second level of said user preferences includes preferences descriptive of one or more preferences of said first level at a finer level of detail, wherein said first level includes preferences that together encompass all preferences of said second level, and wherein at least one of said preferences is at a first level and at least two of said preferences are at a second level” and “determining the desirability of said at least one of said audio and video based upon . . . jointly processing preferences of at least said first level and said second level of said hierarchical levels of said user attribute information to determine a relative ranking between said first program attribute information and said second program attribute information.” Thus, clam 10 and its dependent claims 11 and 13-15 each distinguish over the cited prior art for the same reasons as does claim 1.

Independent claim 25 includes the limitations of “receiving hierarchical user attribute information comprising user preferences, wherein said user preferences include a plurality of preference values, wherein at least one of said user preferences is at a first level and at least two of said user preferences is at a second level where said second level of said user preferences includes preferences descriptive of one or more preferences of said first level at a finer level of detail” and “jointly processing preferences of at least said first level and said second level of said hierarchical levels of said user preferences to evaluate said user attribute information and said program attribute information.” Thus, clam 25 and its dependent claims 26-28 each distinguish over the cited prior art for the same reasons as does claim 1.

Independent claim 50 includes the limitation of “receiving user attribute information corresponding to user preferences, wherein said preferences include negative preferences, wherein at least one of said user preferences is at a first level and at least two of said user preferences is at a second level where said second level of said user preferences includes preferences descriptive of one or more preferences of said first level at a finer level of detail.” Thus, clam 50 and its dependent claims 51-53 each distinguish over the cited prior art for the same reasons as does claim 1.

Independent claim 57 includes the limitations of “discarding said at least one of said audio and video, in response to receiving said user attribute information and said

program attribute information for said at least one of said audio and video, as a desirable said at least one of audio and video for said user based upon if at least one of said first value or said second value indicates non-desirability of said at least one of audio and video” and “if said at least one of audio and video is not discarded as a result of [the previous] step . . . then determining a third value based upon, at least in part, said first value and said second value. The Examiner has failed to even allege that these claim limitations are disclosed or suggested by the prior art. Therefore, claim 57, as well as its dependent claim 59 patentably distinguishes over the cited prior art.

Independent claim 60 includes the limitation of “processing preferences of at least said first level and said second level of said hierarchical levels of said user attribute information to evaluate said at least one of said audio and video, in response to receiving said user attribute information and said program attribute information based upon

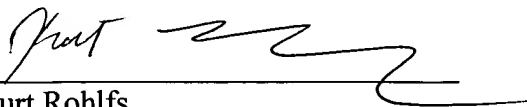
(i) a first set of a plurality of preferences wherein said first set is evaluated based upon a first operator;

(ii) a second set of a plurality of preferences wherein said second set is evaluated based upon a second operator;

(iii) wherein said first set and said second set are evaluated independent of the number of preferences of said first set and said second set.” The Examiner has failed to even allege that these claim limitations are disclosed or suggested by the prior art. Therefore, claim 60, as well as its dependent claims 61-64 patentably distinguish over the cited prior art

In view of the foregoing amendments and remarks, the applicant respectfully requests reconsideration and allowance of claims 1-11, 13-15, 25-28, 50-53, 57 and 59-64.

Respectfully submitted,

  
Kurt Rohlf  
Reg. No. 54,405  
Tel: (503) 227-5631